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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 FOROUD FOLADPOUR, an individual,

12
13 Plaintiff,

14 v.

15 HARTFORD LIFE AND ACCIDENT
16 INSURANCE COMPANY, a
17 Connecticut corporation, and DOES 1-
18 10, inclusive,

19 Defendant.
20

CASE No. SACV 13-01722-JLS (JPRx)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW UPON
ADMINISTRATIVE REVIEW**

21 **I. INTRODUCTION**

22 This action is brought pursuant to the Employee Retirement Income Security
23 Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, by Plaintiff Foroud Foladpour
24 against defendant Hartford Life and Accident Insurance Company (“Hartford”).
25 Plaintiff alleges that Hartford abused its discretion in terminating her long-term
26 disability (“LTD”) benefits. Hartford is the insurer and claims administrator for the
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1 Group Long Term Disability Benefits Plan (the “Plan”). ITT Educational Services,
 2 Inc. (“ITT”), Plaintiff’s former employer, is the Plan’s sponsor. The Plan is an
 3 employee welfare benefit plan governed by ERISA.
 4

5 The parties have submitted the Administrative Record (“AR”) and proposed
 6 findings of fact and conclusions of law for review. The parties agreed to submit the
 7 case to the Court for findings of fact and conclusions of law based on the pleadings,
 8 papers, and Administrative Record. For the following reasons and pursuant to the
 9 standard of review set forth below, Hartford’s decision terminating Plaintiff’s LTD
 10 benefits is AFFIRMED.
 11

12 **II. FINDINGS OF FACT**

13 The following constitutes the Court’s findings of fact and conclusions of law
 14 as required by Federal Rule of Civil Procedure 52.¹
 15

16 **A. Plan Provisions**

17 1. Hartford issued Group Insurance Policy number GLT675331 to ITT
 18 so that ITT could provide LTD benefits to its qualified employees. (AR 596-
 19 97.)²
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23
 24
 25 ¹ To the extent that any findings of fact are included in the Conclusions of Law section,
 26 they shall be deemed findings of fact. To the extent that any conclusions of law are included in
 the Findings of Fact section, they shall be deemed conclusions of law.

27 ² All citations are to the Administrative Record (“AR”), filed by Defendant on October 3,
 28 2014. (Doc. 46.)

1 2. The Plan provides that Hartford has “full discretion and authority to
2 determine eligibility for benefits and to construe and interpret all terms and
3 provisions” of the Plan. (AR 624.)
4

5 3. The Plan has an Elimination Period consisting of the first 182
6 consecutive day period of any one period of disability. (AR 597.)
7

8 4. The Plan defines disability as follows: (A) during the Elimination
9 Period, the employee is prevented from performing one or more of the
10 essential duties of her occupation; (B) for the twenty-four months
11 following the Elimination Period, the employee is prevented from
12 performing one or more of the essential duties of her occupation and, as
13 a result, the employee’s current monthly earnings are less than 80% of
14 the employee’s Indexed Pre-Disability Earnings; and (C) after that
15 twenty-four month period, the employee is prevented from performing
16 one or more of the essential duties of *any* occupation. (AR 613.)
17

18 5. Under “Option 1,” an employee who is disabled under the Plan is
19 entitled to 50% of pre-disability monthly earnings. (AR 597.)
20

21 6. The Plan defines “full-time employment” as “30 hours weekly.”
22 (AR 891.)
23

24 7. Under the terms of the Plan, Plaintiff bears the burden of
25 establishing a “proof of loss” to establish initial and continued eligibility
26 for benefits. (AR 894-95.)
27
28

1 8. To determine whether Plaintiff has established proof of loss, the
2 terms of the Plan provide that Plaintiff may be required to undergo an
3 independent medical examination. (AR 904.)
4

5 **B. Foladpour's Injury**

6 9. Plaintiff was hired by ITT on April 4, 2008, as an Admissions
7 Representative. (AR 851.)
8

9 10. On September 17, 2008, Plaintiff injured her left (non-dominant) hand
10 while attempting to open the lunch room door at work. (AR 849.)
11

12 11. Plaintiff's hand was on the door handle when a "co-worker opened the
13 door hard twisting ["Plaintiff's left] hand." (*Id.*)

14 12. The accident caused immediate swelling and discoloration and
15 Plaintiff experienced a sharp pain in her left wrist and hand later that day.
16 (AR 670.)
17

18 13. Plaintiff was taken to Western Medical Group the next day,
19 September 18, 2008. (AR 797.)
20

21 14. X-rays were taken there of Plaintiff's cervical spine, left shoulder, left
22 wrist and left hand. The x-rays did not reveal any fractures. (AR 834, 849.)
23

24 15. Plaintiff was treated at the Western Medical Group from September
25 18, 2008 through April 15, 2009. (AR 778-97.)

26 16. During this time, for the most part, Plaintiff saw Dr. Giacobetti at the
27 Western Medical Group. (*Id.*)
28

1 17. On September 20, 2008, Plaintiff was seen by Dr. Paz Eilat of the
2 Western Medical Group. (AR 849.)

3 18. Dr. Eilat diagnosed Plaintiff with trapezius strain, left shoulder sprain,
4 left wrist sprain, and left hand sprain. (*Id.*)

5
6 19. On October 29, 2008, Plaintiff underwent a CT scan which showed
7 an area of lucency within the ulnar styloid process. (AR 844.)

8
9 20. On December 30, 2008, Plaintiff went to the Western Hand Center
10 and saw hand surgeon Dr. Andre Chaves. (AR 834-38.)

11 21. Dr. Chaves diagnosed Plaintiff with DeQuervain's tenosynovitis,
12 which is an irritation of the tendons around the base of the thumb. (AR 836.)

13
14 22. In his Initial Consultation Report, Dr. Chaves noted: "This patient
15 presents to my office with an injury that appears to have been relatively
16 mild." (*Id.*)

17
18 23. Dr. Chaves remarked that the lucency in the ulnar styloid process was
19 an "unrelated finding" that had nothing to do with Plaintiff's injury. (*Id.*)

20
21 24. Dr. Chaves also found that "the patient's effort in obtaining grip
22 strength was minimal" and he did not "believe that her range of motion loss
23 at the finger level [was] legitimate." (*Id.*)

24
25 25. Dr. Chaves concluded as follows:

26 In my opinion, the patient is indeed on temporary partial
27 disability regardless of her refusal to return to work. If one
28

1 had the duties available, the patient may return to work
2 with the protection of a thumb spica splint which she does
3 have. She is not permanent or stationary as she has not
4 truly received any specific treatment to the right upper
5 extremity. However, with or without surgery . . . it is not
6 likely the patient will have any specific permanent
7 impairment to the wrist region only.
8
9

10 (AR 837.)

11 26. An MRI taken in in January 2009 showed some minimal changes at
12 the humeral neck but no evidence of a cuff tear. (AR 723.)
13

14 27. An EMG study done in April 2009 was suggestive of mild left carpal
15 tunnel syndrome. (AR 847.)
16

17 28. Plaintiff was re-evaluated by Dr. Chaves on July 7, 2009. (AR 808-
18 809.)

19 29. In a Progress Report, Dr. Chaves noted: "All this is rather bizarre, in
20 a patient who also has symptoms that far exceed what one would expect
21 from the nature of her pathology." (AR 809.)
22

23 30. Dr. Chaves concluded that he could not return Plaintiff "to a full duty
24 capacity with the current level of symptomology." (*Id.*)
25

26 **C. The Workers' Compensation Claim**

27 31. Plaintiff filed a Workers' Compensation claim on or shortly after the
28

1 accident and began receiving Workers' Compensation benefits effective
2 September 17, 2008. (AR 111.)

3 32. During the course of her Workers' Compensation claim, Plaintiff was
4 treated by a number of doctors, including Dr. Eilant, Dr. Giacobetti, Dr.
5 Chaves, Dr. Vincent Gumbs, Dr. Randy Rosen, Dr. Donald Kim, Dr. Bijan
6 Zardouz, Dr. Gary Baker and Dr. Afshin Mashoof. (*See, e.g.*, AR 96-99,
7 109-13, 177-78, 255.)
8
9

10 33. On March 17, 2010, Kim Torres, a chiropractor, prepared a Functional
11 Capacity Evaluation ("FCE") in connection with Plaintiff's Workers'
12 Compensation case. (AR 761-74.)
13

14 34. In the FCE, Torres found that although Plaintiff had semi-sedentary
15 functional capacity, she was not able to return to work or perform her usual
16 occupation. (AR 773.)
17

18 35. Dr. Kim completed a Qualified Medical Evaluation ("QME") on May
19 17, 2010. (AR 669-80.)
20

21 36. Dr. Kim found that Plaintiff was experiencing severe pain as a result
22 of a complex regional pain syndrome. (AR 676.)
23

24 37. Dr. Kim concluded that Plaintiff was "temporarily totally disabled
25 until she can continue with pain management." (*Id.*)
26

27 38. Plaintiff's Workers' Compensation benefits ended on October 6,
28 2010. (AR 160.)

1 39. On July 20, 2011, Plaintiff entered into a final settlement for future
2 medical treatment and permanent disability benefits in her Workers'
3 Compensation case. (AR 32, 447.)
4

5 **D. Payment of Benefits**

6 40. On March 26, 2010, Plaintiff submitted a claim for LTD benefits to
7 Hartford. (AR 854-58.)
8

9 41. As part of her application, Plaintiff submitted an Attending
10 Physician's Statement of Functionality ("APSF") completed by Dr. Gumbs.
11 (AR 582-83.)
12

13 42. In the APSF, Dr. Gumbs listed Plaintiff's primary diagnoses as: left
14 shoulder tendinitis, cervical spine sprain and strain, chronic left wrist
15 tendinitis, left wrist sprain and strain, and left elbow epicondylitis. (AR 582.)
16

17 43. Dr. Gumbs' secondary diagnoses included left trapezial muscle sprain
18 and strain and left medial epicondylitis. (*Id.*)
19

20 44. Dr. Gumbs indicated that Plaintiff was incapable of carrying any
21 weight in her left hand and she could only sit, stand and walk up to two
22 hours a day. (AR 583.)
23

24 45. Dr. Gumbs indicated that he expected these restrictions would last
25 through May 3, 2010. (*Id.*)
26

27 46. Hartford acknowledged receipt of Plaintiff's claim on April 2, 2010.
28 (AR 637.)

1 47. In connection with Plaintiff's LTD claim, Hartford obtained medical
2 records from Plaintiff's Workers' Compensation doctors. (*Id.*)

3 48. On June 9, 2010, Hartford approved Plaintiff's claim for LTD
4 benefits, retroactively effective as of March 19, 2009. (AR 169-73.)

5 49. On November 2, 2010, Dr. Mashoof submitted an Attending
6 Physician's Statement of Continued Disability ("APSCD") to Hartford. (AR
7 489-90.)

8 50. Dr. Mashoof's diagnoses included left shoulder tendonitis, reflex
9 sympathetic dystrophy ("RSD"), radiculopathy, and cervical sprain and
10 strain. (AR 489.)

11 51. Dr. Mashoof indicated that Plaintiff could not sit, stand, or walk for
12 any amount of time. (AR 490.)

13 52. Dr. Mashoof concluded that Plaintiff was "TTD" (temporarily totally
14 disabled). (*Id.*)

15 53. On October 19, 2010, Plaintiff informed Hartford that she had breast
16 cancer and was undergoing post-surgical chemotherapy. (AR 83, 86.)

17 54. Hartford received a letter dated October 1, 2010, from oncologist Dr.
18 Haresh Jhangiani confirming Plaintiff's breast cancer. (AR 565.)

19 55. On March 19, 2011, the definition of disability under the Plan
20 changed to an "any occupation" standard for Plaintiff. (AR 863.)

21 56. After reviewing the medical information, Hartford determined that
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1 Plaintiff was disabled under an “any occupation” standard. (AR 68.)

2 57. Hartford notified Plaintiff on February 18, 2011, that she would keep
3 receiving LTD benefits under the stricter “any occupation” standard. (AR
4 152.)

5
6 58. Hartford also informed Plaintiff that she would be required to
7 periodically furnish continued proof of disability. (*Id.*)

8
9 59. On August 1, 2011, Dr. Mashoof submitted another APSCD to
10 Hartford. (AR 215-16.)

11 60. Dr. Mashoof diagnosed Plaintiff with left shoulder tendonitis and
12 cervical sprain/strain. (AR 215.)

13
14 61. Dr. Mashoof found Plaintiff to be able to sit four hours a day, and
15 stand and walk for thirty minutes a day. (AR 216.)

16
17 62. Dr. Mashoof indicated that Plaintiff could work a five-hour (part-
18 time) work day. (*Id.*)

19 63. Hartford continued to pay Plaintiff LTD benefits throughout 2012.

20
21 **E. Hartford’s Subsequent Review**

22 64. In March 2012, Dr. Jhangiani informed Hartford that there were no
23 longer any signs of Plaintiff’s breast cancer. (AR 467-68.)

24
25 65. A note dated March 27, 2012, from the Compassionate Cancer Care
26 Medical Group, Inc., indicated that Plaintiff was able to work part-time,
27 three days a week. (AR 480.)
28

1 66. In March 2012, Plaintiff began seeing Dr. Afdal Allam, a family
2 practice physician. (AR 478.)

3 67. Dr. Allam submitted an APSCD to Hartford on March 23, 2012. (AR
4 478-79.)

5 68. Plaintiff's diagnoses in the APSCD were left shoulder tendonitis and
6 cervical sprain/strain. (*Id.*)

7 69. Restrictions included lifting no more than five pounds, reaching no
8 more than twenty degrees above horizontal level, and sitting for five hours,
9 standing two hours, and walking one hour. (*Id.*)

10 70. Dr. Allam noted that Plaintiff was able to work part-time. (*Id.*)

11 71. In May 2012, Hartford began to question whether Plaintiff was still
12 "disabled" within the meaning of the Plan after her request for Social
13 Security benefits was denied, in light of the observation that her continuing
14 complaints of pain seemed extreme and exceeded the normal duration for
15 her injuries, and because she had not undergone any surgery despite the
16 severity of her complaints. (AR 861-63.)

17 72. During a January 3, 2013 office visit, Dr. Allam noted that Plaintiff
18 had normal musculature, no joint deformities or abnormalities, and a normal
19 range of motion in all four extremities for her age. (AR 356-58.)

20 73. Dr. Allam sent Hartford another APSCD, this one dated February 20,
21 2013, which included the following restrictions: lifting no more than five
22

1 pounds, and reaching no more than twenty degrees above horizontal level.

2 74. Although Dr. Allam noted that Plaintiff could sit for five hours per
3 day, stand for two hours per day, and walk for one hour per day, he also
4 noted that she was able to work part-time rather than full-time. (AR 228-
5 29.)

6
7 75. On March 25, 2013, one of Hartford's medical case managers,
8 Rowena Buckley, contacted Dr. Allam's office because the restrictions he
9 previously noted did not seem to preclude full-time work. (AR 24-25.)

10
11 76. Case notes from Hartford's database reveal the following entry
12 regarding Dr. Allam's nurse Lisa's explanation regarding the restrictions and
13 limitations noted on the February 20, 2013 APSCD: "[Plaintiff] came to
14 them with these R/Ls, they are not from Dr. Allam." (AR 25.)

15
16 77. Dr. Allam affirmed the restrictions and limitations that were
17 previously included in his APSCD in a fax he signed on March 27, 2013.
18 (AR 419.) Specifically, he reiterated left side only weight and reaching
19 restrictions, repetitive fingering/handling restrictions, and the sitting,
20 standing and walking restrictions noted on the form. (*Id.*)

21
22 78. Based on these restrictions, Hartford had a vocational expert prepare
23 an Employability Analysis Report dated April 10, 2013. (AR 404-11.)

24
25 79. As noted in the Employability Analysis Report, the vocational expert
26 determined that there were several types of jobs Plaintiff could perform on a
27
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1 full-time basis including referral and information aide, surveillance system
2 monitor, and food and beverage order clerk. (AR 409.)

3
4 **F. Termination of Plaintiff's LTD Benefits**

5 80. Hartford sent Plaintiff a denial letter, dated April 30, 2013, informing
6 her that her LTD benefits had been discontinued as of that date (the "Denial
7 Letter"). (AR 340-43.) The letter listed the documents reviewed by Hartford
8 in making its decision to terminate benefits. (AR 341-42.)

9
10 81. The Denial Letter indicated that Hartford's decision to terminate LTD
11 benefits was based on the finding that Plaintiff was no longer unable to
12 engage in any occupation. (AR 342.) Specifically, the Denial Letter noted
13 that on April 10, 2013, the Vocation Rehabilitation Clinical Case Manager
14 performed an Employability Analysis that took into account the restrictions
15 and limitations found in Dr. Allam's February 20, 2013 APSCD. (AR 342.)
16 The Denial Letter reported three occupations Plaintiff would be qualified to
17 perform that were not precluded by the restrictions and limitations noted by
18 Dr. Allam. (*Id.*)

19 82. Hartford notified Plaintiff of her right to appeal and specifically stated
20 that, along with her appeal letter, Plaintiff could submit "written comments,
21 documents, records and other information related to [her] claim." (AR 343.)
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G. Plaintiff's Appeal

83. Plaintiff appealed Hartford's decision in a letter dated June 15, 2013. (AR 332-39.)

84. In her appeal letter, Plaintiff stated that she could work only part-time. (AR 339.)

85. Plaintiff also stated that she had worked part time, three days a week, five hours a day, at Comtek Internet Solution Company from December 2012 to April 2013, and performed satisfactorily. (AR 335, 373.)

86. As part of her appeal, Plaintiff submitted a letter from Dr. Allam, dated May 10, 2013, and addressed "To whom it may concern." (AR 349-50.)

87. Dr. Allam noted that: "Patient takes multiple medications to help control her pain but the side effects of those medications cause drowsiness, sleepiness, and the inability to drive. These medications include Gabapentin 300 mg, Voltaran 1% gel, and Xanax 0.25 mg for anxiety." (AR 349.)

88. Dr. Allam stated as follows with regard to Plaintiff's functional capacity:

As far as the patient's ability to work, she can not [sic]

1 work full time. *As stated by Dr. Donald Kim,*³ she has
2 significant loss of function in the left upper extremity for
3 pushing, pulling and lifting, squeezing, grasping and
4 overhead activities. She is able to work up to 8 hours in a
5 single day – five hours sitting, two hours standing and one
6 hour walking but not on a daily basis Ideally, patient
7 should be able to work five hours per day, if she is able to
8 find a job position that will support these hours. If not, she
9 could work up to eight hours with the above restrictions –
10 5 hours sitting, 2 hours standing and 1 hour walking.
11 Based on her disability, she can only work part time. *The*
12 *QME Board found this patient disabled* having reached
13 maximum medical improvement status. Due to her age and
14 history of breast treatments, she will not improve beyond
15 her current status.
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21 (*Id.* (emphasis added).)

22 89. Moreover, on May 14, 2013, Dr. Allam re-submitted the
23 February 20, 2013 APSCD to Hartford, this time with a notation
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26
27 ³ In making this statement, Dr. Allam appears to have relied on orthopedist Dr. Kim's April
28 2011 evaluation of Plaintiff. (AR 349.)

1 that although Plaintiff could sit, stand, and walk for a total of
2 eight hours a day, she could do so “not every day – only 2-3 days
3 per week.” (AR 226-27.)
4

5 90. After receipt of Plaintiff’s appeal letter, on August 2,
6 2013, Hartford referred Plaintiff’s case to an outside medical
7 consultant, for an independent peer review. (AR 211-12.)
8

9 91. Dr. Robert J. Cooper, a physician board certified in
10 internal medicine/endocrinology, diabetes, and metabolism,
11 conducted a paper review of the case. (AR 204-07.)
12

13 92. Dr. Cooper noted that Plaintiff complained of left
14 shoulder, hip, and wrist pain. (AR 205.)
15

16 93. Dr. Cooper found “no evidence of ongoing impairment or
17 restrictions and limitations from these conditions as of
18 05/01/2013.” (*Id.*)
19

20 94. Dr. Cooper also found no restrictions or limitations as a
21 result of the medications prescribed to Plaintiff. (AR 206.)
22

23 95. Dr. Cooper spoke with Dr. Allam on August 9, 2013. (AR
24 205.)
25

26 96. As reported by Dr. Cooper, Dr. Allam told him that
27 Plaintiff had been discharged from his practice. (*Id.*)
28

97. According to Dr. Cooper, “Dr. Allam stated that there

1 were no other objective findings on exam or recent imaging
2 studies to support restrictions or limitations as of 05/01/2013.”

3 (*Id.*)

4
5 98. Dr. Cooper provided the following rationale for his
6 findings:

7 The claimant is a 58 year old female who claims functional
8 impairment due to cervicalgia, left shoulder impingement
9 syndrome, lateral epicondylitis, cubital fossa lipoma, left
10 wrist CTS, evidence of RSD and complex regional pain
11 syndrome. However, based on review of the medical
12 information, there is no evidence of ongoing impairment
13 or restrictions and limitations from these conditions as of
14 05/01/2013. Based on review of the records, Dr. Allam on
15 01/03/2013 noted a normal musculoskeletal exam with
16 normal range of motion of the extremities. Although there
17 was mild pain with motion of the cervical spine and pain
18 in the left elbow, these findings do not support ongoing
19 impairment or restrictions and limitations Although
20 Dr. Allam states in the attending physician letter on
21 05/10/2013 that medications are causing drowsiness,
22 sleepiness and inability to drive, there is no evidence in the
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1 medical records to support these restrictions or limitations.

2 (AR 206.)

3 99. On September 9, 2013, Hartford sent Plaintiff a letter
4 upholding its denial based on the medical documents in the claim
5 file, Plaintiff's additional submissions, the peer review by Dr.
6 Cooper, and the Employability Analysis Report (the "Appeal
7 Letter"). (AR 119-121.)
8
9

10 100. The letter stated that the medical information does not
11 support a finding that Plaintiff was totally disabled. Specifically,
12 Hartford concluded:
13

14 Therefore, based on the totality of the
15 information presented, that included our
16 independent review of the medical records received
17 to date, your self-reported symptoms, the report
18 from Dr. Cooper, whose opinion and expertise we
19 further relied on, review by the Rehabilitation Case
20 Manager and the policy provisions, Appeals
21 concludes that the medical documentation in your
22 file does not support a functional impairment that
23 would have precluded you from performing the
24 duties of any occupation beyond 4/30/13.
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1 (AR 121.)

2 101. The letter stated that because Hartford's April 30, 2013
3 decision terminating benefits was accurate, no additional
4 benefits were payable. (AR 121.)
5

6 102. Hartford's decision on appeal was "final and binding."

7 (*Id.*)
8

9 **III. STANDARD OF REVIEW**

10 A participant or beneficiary of an ERISA plan may bring a civil action
11 against a plan administrator "to recover benefits due to [her] under the terms of
12 [her] plan, to enforce [her] rights under the terms of the plan, and to clarify [her]
13 rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B).
14 Building upon an analogy to review of the discretionary acts of a trustee of a
15 common-law trust, the Supreme Court has held that the scope of judicial review of
16 an ERISA benefits decision depends on whether the plan confers discretion to the
17 plan administrator in determining benefits. *See Metropolitan Life Ins. Co. v. Glenn*,
18 554 U.S. 105, 111 (2008). The Court reviews a denial of benefits *de novo*, unless
19 "the benefit plan gives the administrator or fiduciary discretionary authority to
20 determine eligibility for benefits or to construe the terms of the plan." *Firestone*
21 *Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989).
22
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26 Discretionary authority is unambiguously granted if a plan administrator has
27 both the responsibility to interpret the terms of a plan and determine eligibility for
28

1 benefits. *See, e.g., Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 965 (9th
2 Cir. 2006). In such a case, the Court applies a deferential standard and reviews the
3 administrator's determinations for an abuse of discretion. *Id.* "Under this
4 deferential standard, a plan administrator's decision 'will not be disturbed if
5 reasonable.'" *Stephan v. Unum Life Ins. Co. of Am.*, 697 F.3d 917, 929 (9th Cir.
6 2012) (internal quotation marks and citation omitted). Thus, deference to the
7 administrator's benefits decision is required unless it is found to be "(1) illogical,
8 (2) implausible, or (3) without support in inferences that may be drawn from the
9 facts in the record." *Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666,
10 676 (9th Cir. 2011) (internal quotation marks and citation omitted).

14 This abuse of discretion standard of review applies even in the face of a
15 conflict of interest often found in cases involving ERISA claims for benefits.
16 Specifically, a conflict of interest arises in the common arrangement where an
17 insurance company both determines a participant's eligibility for benefits and
18 provides the funding for the payment of such benefits. *Glenn*, 554 U.S. at 112-15.
19 When an administrator's benefits determination occurs under this type of conflict
20 of interest, it must "be weighed as a factor in determining whether there is an abuse
21 of discretion." *Glenn*, 554 U.S. at 115 (internal quotation marks and citation
22 omitted).

26 The Supreme Court explained this standard:
27
28

1 We believe that *Firestone* means what the word
2 “factor” implies, namely, that when judges review the
3 lawfulness of benefit denials, they will often take account
4 of several different considerations of which a conflict of
5 interest is one. This kind of review is no stranger to the
6 judicial system. Not only trust law, but also
7 administrative law, can ask judges to determine
8 lawfulness by taking account of several different, often
9 case-specific, factors, reaching a result by weighing all
10 together.
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14 *Id.* at 117.

15 Accordingly, the district court must take the conflict of interest into account
16 when determining whether the plan administrator abused its discretion and must
17 “temper the abuse of discretion standard with skepticism commensurate with the
18 conflict.” *Nolan v. Heald Coll.*, 551 F.3d 1148, 1153 (9th Cir. 2009) (internal
19 quotation marks and citation omitted).
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21

22 The Court applies this standard of review in reaching its conclusions of law.

23 **IV. CONCLUSIONS OF LAW**

24
25 1. Plaintiff has standing as a plan beneficiary to bring this action against
26 the plan administrator, Hartford, to recover benefits under the Plan. 29
27 U.S.C. § 1132(a)(1)(B).
28

1 2. Plaintiff challenges Hartford's termination of her LTD benefits based
2 on the administrative record; she offers no extrinsic evidence of malice, self-
3 dealing, or bias in connection with Hartford's determination of her continued
4 eligibility for benefits or in connection with Hartford's claims-paying history
5 or claims-processing procedures.

7 3. An administrator's decision to terminate benefits under an ERISA
8 plan is subject to the same review as is an initial decision to deny benefits;
9 thus, Hartford's decision to terminate Plaintiff's LTD benefits is subject to
10 the review for abuse of discretion discussed in *Glenn. Muniz v. Amec Const.*
11 *Mgmt., Inc.*, 623 F.3d 1290, 1296 (9th Cir. 2010) ("That benefits had
12 previously been awarded and paid may be evidence relevant to the issue of
13 whether the claimant was disabled and entitled to benefits at a later date, but
14 that fact should not itself shift the burden of proof.")

18 4. Because Hartford had the dual roles of claims administrator and
19 insurer, it operated under a conflict of interest. The Court must therefore
20 consider this conflict of interest as a factor in the Court's determination of
21 whether Hartford's decision to terminate Plaintiff's LTD benefits was an
22 abuse of discretion.

25 5. The Denial Letter adequately explained the reasons why Plaintiff's
26 LTD benefits were terminated. Specifically, the Denial Letter explained the
27 LTD benefits eligibility requirements, including the "any occupation"
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1 standard. Moreover, in addition to listing the documents upon which
2 Hartford relied, the Denial Letter outlined the results of the April 10, 2013
3 Employability Analysis. The Employability Analysis identified three
4 occupations Plaintiff could perform notwithstanding the restrictions and
5 limitations outlined in Dr. Allam's February 20, 2013 APSCD.
6

7 6. As noted in the Denial Letter, the administrator relied on the most
8 current medical reports from Plaintiff's treating physician in making its
9 determination that Plaintiff was no longer eligible for LTD benefits.
10 Specifically, Hartford relied on reports and notes from the only doctor who
11 treated Plaintiff in the year before her LTD benefits were terminated. As the
12 Denial Letter notes, Hartford relied upon Dr. Allam's February 20, 2013
13 APSCD, his offices notes from January 3, 2013, its own Medical Case
14 Management Review on April 4, 2013, and the April 10, 2013
15 Employability Analysis.
16

17 7. Despite Plaintiff's argument to the contrary, the Denial Letter was not
18 procedurally defective for failing to advise Plaintiff what evidence she
19 needed to submit on appeal. By identifying the most recent medical
20 information as that relied upon in determining Plaintiff was no longer
21 eligible for LTD benefits, Hartford also identified what medical information
22 needed to be addressed in order for her to mount a successful appeal. Indeed,
23 Plaintiff was not deprived of the opportunity to address the medical evidence
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1 Hartford considered to be most relevant: She sought and received an
2 updated APSCD from Dr. Allam that clarified his opinion regarding her lack
3 of ability to work a five-day work week. She also sought and received from
4 Dr. Allam a letter dated May 10, 2013, in which Dr. Allam stated “[i]n [his]
5 professional opinion, [Plaintiff] is disabled and should continue to receive
6 disability status and benefits.” (AR 349-50.)
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9 8. Although Plaintiff argues otherwise, Hartford did not selectively
10 review the medical evidence in Plaintiff’s claim file in order to support its
11 denial on appeal. To the contrary, upon receiving the updated information
12 from Dr. Allam regarding Plaintiff’s restrictions and limitations, Hartford
13 requested independent medical review.
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16 9. Specifically, Hartford sought Dr. Cooper’s independent analysis of the
17 clarified opinions of Plaintiff’s treating physician, Dr. Allam. As noted
18 herein, Dr. Allam’s assessment of Plaintiff’s restrictions and limitations in
19 February 2013 differed from his May 2013 assessment, although the two
20 assessments were not entirely inconsistent. More specifically, in May 2013,
21 Dr. Allam stated clearly that Plaintiff could not work five eight-hour days
22 per week, and that two or three such work days or, alternatively, five five-
23 hour days per week, would be tolerable given her restrictions and
24 limitations. These clarified restrictions and limitations are seemingly
25 inconsistent with the part of his February 20, 2013 APSCD that reported
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1 Plaintiff had the ability to walk, stand, and sit for approximately eight hours
2 a day. On the other hand, the clarified restrictions and limitations were
3 consistent with the notation on that same APSCD that “P[atien]t is able to
4 work part time.” (AR 229.)
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6 10. Dr. Cooper impliedly rejected Dr. Allam’s clarified opinion regarding
7 Plaintiff’s restrictions and limitations, and Hartford permissibly relied upon
8 Dr. Cooper’s professional opinion. As noted in Dr. Cooper’s report, Dr.
9 Cooper discussed Dr. Allam’s clarified opinion regarding Plaintiff’s
10 restrictions and limitations with him on August 9, 2013, and learned that no
11 recent objective medical examination or testing supported those restrictions
12 and limitations. Thus, Plaintiff’s restrictions and limitations were based on
13 her then-current self-reporting of her subjective symptoms. Indeed, looking
14 to Dr. Allam’s May 10, 2013 letter, it is evident that he relied not on current
15 medical information but instead on the opinions of Plaintiff’s past
16 orthopedic evaluations. Specifically, Dr. Allam refers to orthopedic
17 evaluations in April 2011 and July 2012, which reflect medical information
18 from eight months to two years prior to his letter.
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20 11. Plaintiff’s reliance on *Saffon v. Wells Fargo & Co.*, 522 F.3d 863 (9th
21 Cir. 2008), is unconvincing. In *Saffon*, MetLife represented that it terminated
22 disability benefits because the case file lacked a Functional Capacity
23 Evaluation (“FCE”). *Id.* at 871. However, MetLife first referenced the
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1 absence of an FCE its denial of the Plaintiff's appeal. *Id.* On these facts, the
2 Ninth Circuit held that the claimant was not offered a full and fair review of
3 her claim because if the lack of an FCE led to the termination of benefits,
4 then MetLife should have sought one prior to its final decision on appeal, at
5 a time when the plaintiff had the opportunity to present evidence required by
6 MetLife. *Id.* at 871-72. As noted above, Plaintiff was given an opportunity to
7 present relevant evidence on appeal, and she availed herself of that
8 opportunity. Unlike the plaintiff in *Saffon*, Plaintiff here was advised that the
9 report of her treating physician was relied upon in terminating her LTD
10 benefits, her physician was given the opportunity to clarify his report, and
11 that clarification was reviewed by a medical doctor who ultimately advised
12 Hartford of his medical opinion that Plaintiff was no longer disabled within
13 the meaning of the terms of the Plan.

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18 12. Neither can Hartford be criticized in the manner that the Ninth
19 Circuit criticized MetLife for stating a different rationale for upholding its
20 decision to terminate the plaintiff's benefits. *Id.* at 872 (noting that "the fact
21 that the claims administrator presented a new reason at the last minute bears
22 on whether denial of the claim was the result of an impartial evaluation or
23 was colored by MetLife's conflict of interest"). Here, the Denial Letter
24 advised Plaintiff that Hartford was terminating her LTD benefits in light of
25 the vocational assessment that identified three positions she would be able to
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1 perform notwithstanding the restrictions and limitations noted by her treating
2 physician's latest APSCD. Plaintiff was advised of her right to appeal, and
3 when Plaintiff availed herself of the opportunity to present a clarified
4 medical opinion from her treating physician, Hartford sought a focused
5 review of that clarified medical opinion.
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7 13. Hartford explained its decision upholding the termination of
8 Plaintiff's LTD benefits. Hartford did not present a new reason for the
9 termination of Plaintiff's LTD benefits; rather, it merely reiterated its earlier
10 position and provided additional support for that position in light of
11 Plaintiff's treating doctor's clarified opinion. Thus, Hartford did not engage
12 in the type of *post hoc* rationalization that led the Ninth Circuit to find an
13 abuse of discretion by the administrator in *Saffon*.
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17 14. Moreover, although the terms of the Plan would permit Hartford to
18 conduct an in-person physical examination of Plaintiff, Hartford was not
19 required to do so before terminating her LTD benefits. Such failure can
20 amount to an abuse of discretion in some instances, but the failure to require
21 a medical examination does not amount to an abuse of discretion under the
22 facts of this case. *Cf. Montour*, 588 F.3d at 634 (finding an abuse of
23 discretion where it was unclear that reviewing doctors were presented with
24 all relevant medical information and where no physical examination was
25 conducted).
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1 15. Thus, the decision to conduct a pure paper review does not establish
2 that Hartford's decision to terminate benefits was an abuse of discretion.
3 Here, Hartford relied on the assessment provided by Plaintiff's treating
4 physician in making the decision to terminate benefits. When Dr. Allam
5 clarified his opinion, Hartford took reasoned action in having the clarified
6 opinion reviewed by Dr. Cooper. Dr. Cooper examined the medical evidence
7 provided to him, discussed Plaintiff's case with Dr. Allam, and set forth his
8 opinion regarding whether Plaintiff was disabled under the terms of the Plan.
9 10 16. As is evident from his May 2013 letter, Dr. Allam relied on older
11 medical evidence which does not support a finding of total disability as of
12 the date that Plaintiff's LTD benefits were terminated.
13 14 17. Plan administrators "are not obliged to accord special deference to the
15 opinions of treating physicians." *Black & Decker v. Nord*, 538 U.S. 822, 825
16 (2003). Thus, Hartford did not abuse its discretion in rejecting the clarified
17 opinions provided by Dr. Allam in May 2013. Although Dr. Allam's
18 clarification is not necessarily irreconcilable with his earlier opinion, it is
19 somewhat inconsistent with that earlier opinion and is in large part based on
20 outdated medical reports that do not specifically address Plaintiff's medical
21 condition as of May 2013.
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18. Plaintiff's argument that Hartford abused its discretion by terminating
Plaintiff's LTD benefits in the absence of evidence of improvement of her

1 disabling condition is unfounded. There was, in fact, evidence of
2 improvement between the time Hartford approved benefits in 2010 and
3 when it terminated benefits in 2013. For example, in 2010, Dr. Mashoof
4 indicated that Plaintiff was unable to sit, stand or walk for any amount of
5 time. However, in 2011, the same doctor indicated that Plaintiff could sit
6 four hours a day and stand and walk thirty minutes a day. Thus, at that time,
7 Dr. Mashoof stated that Plaintiff could work a five-hour work day. Indeed,
8 Plaintiff worked part-time in 2013.

11 19. Nor was it an abuse of discretion for Hartford to require objective
12 evidence of Plaintiff's disability. The terms of the Plan contemplate the
13 consideration of medical information, including objective medical
14 information such as x-ray films. (AR 904.) It is not unreasonable for a plan
15 administrator to require some objective evidence as proof of total disability.
16 *See, e.g., Jordan v. Northrop Grumman Corp. Welfare Ben. Plan*, 63 F.
17 Supp. 2d 1145, 1156 (C.D. Cal. 1999), *aff'd*, *Jordan v. Northrop Grumman*
18 *Corp. Welfare Benefit Plan*, 370 F.3d 869, 877 (9th Cir. 2004) (overruled on
19 other grounds by *Abatie*, 458 F.3d at 965); *Martin v. Cont'l Cas. Co.*, 96 F.
20 Supp. 2d 983, 993 (N.D. Cal. 2000); *Voight v. Metropolitan Life. Ins. Co.*,
21 28 F. Supp. 2d 569, 578 (C.D. Cal. 1998).

26 20. Dr. Allam originally opined that Plaintiff could work a total of eight
27 hours a day, subject to a specific combination of sitting, standing, and
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1 walking, but also that she could work on a part-time basis. When pressed, he
2 clarified his opinion that although she could work up to eight hours a day,
3 she could not do so for five days a week. However, he based this
4 clarification on outdated orthopedic reports. Additionally, the only then-
5 current medical information that supported a finding of disability was
6 Plaintiff's subjective complaints of pain. Dr. Cooper's review points out
7 these weaknesses in Dr. Allam's clarification.
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10 21. On this record, and taking into account the conflict of interest,
11 Hartford did not abuse its discretion in terminating Plaintiff's LTD benefits.
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13 **V. CONCLUSION**

14 Upon review of the Administrative Record, the terms of the Plan, the
15 Findings of Fact and Conclusions of Law set forth herein, and under the relevant
16 legal standard, taking into account the administrator's conflict of interest, the Court
17 finds no abuse of discretion in the decision to terminate Plaintiff's LTD benefits.
18 Therefore, the Court hereby AFFIRMS Hartford's decision terminating Plaintiff's
19 LTD benefits.
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22 **IT IS SO ORDERED.**

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24 Dated: June 12, 2015



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27 Honorable Josephine L. Staton
28 United States District Judge